

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lauren Kerstein	Team: Squad #7	CCRB Case #: 201501417	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 02/26/2015 6:30 PM	Location of Incident: Intersection of Chauncey Street and Howard Avenue; 81 Precinct stationhouse	Precinct: 81	18 Mo. SOL 8/26/2016	EO SOL 8/26/2016	
Date/Time CV Reported Fri, 02/27/2015 10:28 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/27/2015 10:28 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT EreK Powers	05297	944907	081 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mark Xylas	11251	948160	081 PCT
2. SGT Steven Vansoest	4974	943909	081 PCT
3. POM Ryan Galvin	08096	948997	081 PCT
4. POM Romando Julien	08171	949152	081 PCT
5. POF Amber Lagrandier	05373	940352	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT EreK Powers	Abuse: Sgt. EreK Powers threatened § 87(2)(b) and § 87(2)(b) with the use of force at the intersection of Chauncey Street and Howard Avenue in Brooklyn and at the 81st Precinct stationhouse.	
B.SGT EreK Powers	Discourtesy: Sgt. EreK Powers spoke discourteously to § 87(2)(b) and § 87(2)(b) at the intersection of Chauncey Street and Howard Avenue in Brooklyn.	
C.SGT EreK Powers	Force: Sgt. EreK Powers used physical force against § 87(2)(b) at the intersection of Chauncey Street and Howard Avenue in Brooklyn.	
D.SGT EreK Powers	Abuse: Sgt. EreK Powers refused to provide his name and shield number to § 87(2)(b) at the intersection of Chauncey Street and Howard Avenue in Brooklyn.	

Officer(s)	Allegation	Investigator Recommendation
E. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b) at the intersection of Chauncey Street and Howard Avenue in Brooklyn.	
F.SGT EreK Powers	Abuse: Sgt. EreK Powers threatened to arrest § 87(2)(b) at the 81st Precinct stationhouse.	

### Case Summary

On February 26, 2015, at approximately 6:30 p.m., Sgt. Erek Powers, PO Mark Xylas, PO Ryan Galvin and PO Romando Julien were driving down Howard Avenue in Brooklyn. As they approached Chauncey Street, they observed § 87(2)(b) and § 87(2)(b) having a verbal dispute. Six other people, identified via investigation as § 87(2)(b) and § 87(2)(b) were also present.

When the officers approached § 87(2)(b) and § 87(2)(b) Sgt. Powers allegedly threatened to use force against them (**Allegation A**). Shortly thereafter, Sgt. Powers allegedly spoke discourteously to § 87(2)(b) and § 87(2)(b) (**Allegation B**). While Sgt. Powers was trying to restrain § 87(2)(b) § 87(2)(b) alleged that Sgt. Powers punched her in the face (**Allegation C**). § 87(2)(b) attempted to obtain Sgt. Powers' name and shield number but he refused to provide it (**Allegation D**). § 87(2)(b) and § 87(2)(b) were subsequently arrested. Before being placed into a police vehicle, § 87(2)(b) alleged that an unidentified officer told her to "Shut the fuck up" (**Allegation E**).

§ 87(2)(b) and § 87(2)(b) went to the 81<sup>st</sup> Precinct shortly after. During this time, § 87(2)(b) alleged that Sgt. Powers threatened to arrest her (**Allegation F**).

Later that night, § 87(2)(b) went to § 87(2)(b) in Brooklyn. Medical personnel observed mild swelling to the left side of her face. She was diagnosed with a contusion and prescribed 400 mg of Ibuprofen.

### Attempts to Contact Civilians

- § 87(2)(b) and § 87(2)(b) were the only parties who provided sworn statements to the CCRB in regard to this complaint.
- § 87(2)(b) and § 87(2)(b) all provided phone statements to the investigation but were uncooperative in providing in-person statements.
- Contact was never established with § 87(2)(b) a witness. A Lexis Nexis search yielded an address, two phone numbers and an e-mail address. Five calls were placed to both phone numbers, which were both determined to be out of service. One e-mail was sent, but was returned as undeliverable. Two letters were sent and have not been returned as undeliverable. A CTS search for § 87(2)(b) failed to reveal additional information.

### Mediation, Civil and Criminal Histories

- This complaint was unsuitable for mediation.
- As of May 19, 2015, § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with regard to this incident (B.R. 01). A Notice of Claim request has been sent to determine whether § 87(2)(b) and § 87(2)(b) have filed Notice of Claims and will be forwarded upon receipt.
- According to the Office of Court Administration records, § 87(2)(b)'s arrest stemming from this incident has been dismissed and § 87(2)(b) and § 87(2)(b)'s arrests are in contemplation of being dismissed (B.R. 02).
- In the past ten years, § 87(2)(b) and § 87(2)(b) have not been arrested.
- According to the Office of Court Administration records, in the past ten years, § 87(2)(b) and § 87(2)(b) have not been arrested. § 87(2)(b) on (B.R. 02).

### Civilian and Officer CCRB Histories

- This is the first complaint filed by or involving § 87(2)(b) and § 87(2)(b) has filed one previous complaint, CCRB# 201102985, which was referred to OCD (B.R. 03).
- Sgt. Powers has been a member of the service for seven years and has been the subject of 19 allegations stemming from ten complaints. § 87(2)(g) (See Officer's CCRB History, B.R. 04):
  - In CCRB# 201009973, CCRB# 201014442 and CCRB# 201404369, civilians alleged that Sgt. Powers made the following statements, "Don't call back the fucking number," "I don't give a fuck," "Motherfucker, get out of here before I lock your ass up, you snitch," "Shut the fuck up. I am an officer. I do whatever the fuck I want," and "Get the fuck out of here." All three complaints were closed as complainant uncooperative.
  - In CCRB# 201101753, a civilian alleged that Sgt. Powers threatened to "fuck" them up. The complaint was closed as victim uncooperative.
  - In CCRB# 201213946, a civilian alleged that Sgt. Powers said, "You go home when I tell you to go home, bum bitches." Absent independent corroboration, the allegation was closed as unsubstantiated.

### Findings and Recommendations

#### Allegations Not Pleaded

- **Discourtesy:** A number of civilians alleged that Sgt. Powers used some variation of discourteous language while speaking with § 87(2)(b) and § 87(2)(b) #####. § 87(2)(b) clarified that the discourteous language was solely directed at § 87(2)(b) and § 87(2)(b) denied that any profanity was used.
- **Abuse of Authority:** § 87(2)(b) and § 87(2)(b) alleged that Sgt. Powers was swinging his fists at § 87(2)(b) and § 87(2)(b). § 87(2)(b) alleged that Sgt. Powers was swinging at § 87(2)(b) not her. § 87(2)(b) denied that Sgt. Powers swung at him. § 87(2)(g)
- **Force:** § 87(2)(b) alleged that Sgt. Powers threw § 87(2)(b) against a car. § 87(2)(g)
- **Force:** § 87(2)(b) alleged that, as Sgt. Powers was trying to arrest § 87(2)(b) she tried to get in between them and may have made physical contact with Sgt. Powers. In response, Sgt. Powers admittedly pushed her backwards and she fell to the ground. § 87(2)(g)

#### Explanation of Subject Officer Identification

- § 87(2)(b) and § 87(2)(b) positively identified Sgt. Powers as the subject officer during a photo array. All the other civilians provided accurate physical descriptions of Sgt. Powers. § 87(2)(g)
- § 87(2)(b) described the officer who was discourteous to her as a 5'5" tall, uniformed Hispanic woman with long, straight blonde hair in her forties (See § 87(2)(b)'s Phone Statement and CCRB Statement). The investigation was unable to

identify this officer, therefore a discourtesy allegation has been pled against “an officer.” The attempts the investigation made to identify this officer are summarized below:

- During their interviews, PO Galvin and PO Xylas denied that any female officers responded to the scene and Sgt. Powers did not recall if any female officers responded. PO Julien stated that a few female officers in uniform responded to the scene, but he did not know them or what command they were assigned to (See Officer Statements).
- An Event request indicated that the units who identified themselves as being present on scene only included male officers (B.R. 04).
- The only Hispanic female officer listed on the 81 Precinct tour 3 roll call was PO Amber Lagrandier who was assigned to the Domestic Violence Unit (B.R. 07).
- During her CCRB interview, PO Lagrandier did not recall the incident and noted that she ended her tour at 3:28 p.m., before the incident occurred. Additionally, she did not match the officer description provided by § 87(2)(b) (See Officer Statement).

**Allegation A: Abuse of Authority – Sgt. Erik Powers threatened § 87(2)(b) and § 87(2)(b) with the use of force at the intersection of Chauncey Street and Howard Avenue in Brooklyn and at the 81<sup>st</sup> Precinct stationhouse.**

**Allegation B: Discourtesy- Sgt. Erik Powers spoke discourteously to § 87(2)(b) and § 87(2)(b) at the intersection of Chauncey Street and Howard Avenue in Brooklyn.**

**Allegation D: Abuse of Authority – Sgt. Erik Powers refused to provide his name and shield number to § 87(2)(b) at the intersection of Chauncey Street and Howard Avenue in Brooklyn.**

**Allegation F: Abuse of Authority – Sgt. Erik Powers threatened to arrest § 87(2)(b) at the 81<sup>st</sup> Precinct stationhouse.**

When the officers approached § 87(2)(b) and § 87(2)(b) stated that he got into an argument with Sgt. Powers and Sgt. Powers threatened to “bust” him up. When the other family members began asking Sgt. Powers why § 87(2)(b) had been arrested, Sgt. Powers allegedly told § 87(2)(b) and her family members to “Get the fuck away.”

According to § 87(2)(b) Sgt. Powers continued trying to approach § 87(2)(b) at which point she tried to get in between and asked Sgt. Powers what he thought he was doing. Sgt. Powers allegedly told § 87(2)(b) to “Shut the fuck up.”

According to § 87(2)(b) she asked two unidentified officers for Sgt. Powers’ shield number. Sgt. Powers overheard her request and allegedly stated, “I don’t have to give you shit.”

At the 81<sup>st</sup> Precinct stationhouse, § 87(2)(b) alleged that, while lodging him into the command log, Sgt. Powers allegedly threatened to fight him and stated “I’m going to fuck this little kid up.” § 87(2)(b) further alleged that Sgt. Powers threatened to arrest her in front of the desk.

Sgt. Powers denied all the allegations made by the civilians and PO Julian, PO Xylas and PO Galvin also denied the allegations. Sgt. Steven Van Soest, who was the desk sergeant at the 81<sup>st</sup> Precinct, denied that Sgt. Powers used profanity during his interaction with § 87(2)(b) Sgt. Steven Van Soest noted that Sgt. Powers and § 87(2)(b) spoke at the precinct, but he denied hearing him threaten to arrest her. Sgt. Van Soest acknowledged that § 87(2)(b) asked him for Sgt. Powers’ name and shield number, which he provided (See Sgt. Van Soest’s CCRB Statement).

Although each civilian, with the exception of § 87(2)(b) and § 87(2)(b) alleged that Sgt. Powers used profanity during the incident, they were not consistent with the statements he allegedly made. Furthermore, no civilians corroborated § 87(2)(b) or

§ 87(2)(b) allegations that Sgt. Powers threatened them with force or refused to provide his name and shield number to them.

§ 87(2)(g)

**Allegation C: Force- Sgt. EreK Powers used physical force against § 87(2)(b) at the intersection of Chauncey Street and Howard Avenue in Brooklyn.**

§ 87(2)(b) admittedly positioned herself in between § 87(2)(b) and Sgt. Powers during the course of § 87(2)(b)'s arrest. § 87(2)(b) then pushed § 87(2)(b) forward in an attempt to get closer to Sgt. Powers, at which point, Sgt. Powers allegedly and “accidentally” punched § 87(2)(b) in the face. § 87(2)(b) believed the punch to be an accident, because at the time, Sgt. Powers was advancing toward § 87(2)(b) but § 87(2)(b) suddenly placed herself in the way (See § 87(2)(b) CCRB Statement). § 87(2)(b) and § 87(2)(b) corroborated that Sgt. Powers punched § 87(2)(b) in the face, though it seemed inadvertent, as Sgt. Powers was attempting to get to § 87(2)(b) to handcuff him. No other civilian witnessed § 87(2)(b) get punched in the face.

After the incident, § 87(2)(b) went to § 87(2)(b) in Brooklyn and medical personnel corroborated that she had mild swelling on the left side of her face. She was diagnosed with a facial contusion (B.R. 05). § 87(2)(b) informed medical personnel that she was punched in the face by an officer in the midst of trying to “defend” her brother from the officer.

Sgt. Powers, PO Xylas, PO Galvin and PO Julien did not recall § 87(2)(b) being on scene. Sgt. Powers denied punching any of the civilians at the scene and PO Xylas, PO Galvin and PO Julien denied witnessing Sgt. Powers punch any of the civilians.

§ 87(2)(g)

At the scene of a police incident, officers are required to use minimum amount of necessary force. NYPD Patrol Guide, Section 203-11 (B.R. 06).

§ 87(2)(g)

§ 87(2)(g)

**Allegation E: Discourtesy- An officer spoke discourteously to § 87(2)(b) at the intersection of Chauncey Street and Howard Avenue in Brooklyn.**

§ 87(2)(b) alleged that an unidentified officer told her to “Shut the fuck up.” No other civilian or officer witnessed this allegation. As discussed in the “Identification of Subject Officer” section, the investigation was unable to identify the officer who allegedly made the discourteous remark to § 87(2)(b) § 87(2)(g)

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Pod: Pod 7

Investigator:	<u>Lauren Kerstein</u>	<u>06/10/15</u>
	Signature	Date

Supervisor:	<u></u>	<u></u>
	Title/Signature	Date

Reviewer:	<u></u>	<u></u>
	Title/Signature	Date

Reviewer:	<u></u>	<u></u>
	Title/Signature	Date